

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Arthur Albano	Team: Squad #3	CCRB Case #: 201410175	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 09/28/2014 2:35 AM	Location of Incident: 5 9th Avenue	Precinct: 06	18 Mo. SOL 3/28/2016	EO SOL 3/28/2016	
Date/Time CV Reported Sun, 09/28/2014 6:56 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 10/03/2014 3:33 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Michael Alfieri	00800	942938	006 PCT
2. POM Colin Sullivan	13597	951309	006 PCT
3. POM Brian Benvenuto	23866	952459	006 PCT
4. POM Nicholas Castiello	22523	952555	006 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Kenton Grant	05639	949053	006 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Michael Alfieri	Discourtesy: Sgt. Michael Alfieri spoke rudely to § 87(2)(b)	
B.POM Nicholas Castiello	Force: PO Nicholas Castiello used physical force against § 87(2)(b)	
C.POM Colin Sullivan	Force: PO Colin Sullivan used physical force against § 87(2)(b)	
D.POM Brian Benvenuto	Force: PO Brian Benvenuto used pepper spray against § 87(2)(b)	
E.SGT Michael Alfieri	Force: Sgt. Michael Alfieri used a taser against § 87(2)(b)	

Case Summary

On September 27, 2014, at approximately 2:35 a.m., § 87(2)(b) was asked to leave club Cielo, located on 18 Little West 12th Street, in Manhattan by a bouncer within the club. While § 87(2)(b) was outside of the club, he had a discussion with the bouncer about paying his tab. According to § 87(2)(b) there were drinks on the tab that he never received and he wanted the tab adjusted. During this conversation a group of four officers, determined by investigation to be Sgt. Michael Alfieri, PO Brian Benvenuto, PO Colin Sullivan and PO Nicholas Castiello approached § 87(2)(b). According to § 87(2)(b) Sgt. Alfieri stated to § 87(2)(b) that if he signed the tab, Sgt. Alfieri would go inside the club and speak to the manager about the discrepancy in the number of drinks he needed to pay for. § 87(2)(b) signed the tab and Sgt. Alfieri told him to “have a good night.” § 87(2)(b) stated that Sgt. Alfieri was “not a man of his word” and stated that was why people don’t respect the NYPD. Sgt. Alfieri then allegedly called § 87(2)(b) a “fucking punk.” (**Allegation A**).

§ 87(2)(b) then began leaving the location but stopped to text his friend who was still inside the club. While § 87(2)(b) stopped, the same four officers approached and stated, “Let’s go, get out of here.” § 87(2)(b) continued to walk away, and the four officers continued to follow him until he reached the front of 5 9th Avenue and suddenly, an officer commanded § 87(2)(b) to “Get down.” § 87(2)(b) sat down on nearby steps and put his hands above his head. Then, PO Sullivan and PO Castiello allegedly slammed § 87(2)(b) to the ground (**Allegation B and C**). While this was happening, § 87(2)(b) eyes were watering and he believed that an officer discharged his OC spray (**Allegation D**). Sgt. Alfieri then allegedly used his taser against § 87(2)(b) even though § 87(2)(b) was not resisting (**Allegation E**).

§ 87(2)(b) was arrested for § 87(2)(b), all of which § 87(2)(b) disputes. § 87(2)(b) was taken to § 87(2)(b) Hospital and refused treatment, however a taser prong was removed from his back.

Mediation, Civil, Criminal Histories

- § 87(2)(b) filed a notice of claim against the city of New York claiming severe and permanent personal injury and harm and seeking \$2,000,000 to \$5,000,000 in redress (Board Review 1). § 87(2)(b) 50-h hearing has not been scheduled as of the date of this report. § 87(2)(g)
- § 87(2)(b)

Civilian and Officer CCRB Histories

- This is the first complaint filed by or involving § 87(2)(b)
- Sgt. Alfieri has been a member of the service for 8 years and there are two substantiated allegations against him. In CCRB case #201207877 the CCRB substantiated a vehicle search allegation and a search of person allegation, recommending charges. The NYPD’s imposed penalty was instructions for the two allegations. § 87(2)(g)
- PO Colin Sullivan has been a member of the service for three years and there are no substantiated CCRB allegations against him. § 87(2)(g)

- PO Brian Benvenuto has been a member of the service for two years and this was the first CCRB complaint filed against him.
- PO Nicholas Castiello has been a member of the service for two years and there are no substantiated CCRB allegations against him. § 87(2)(g)

Potential Issues

Field work for this case was conducted on February 26, 2015, at approximately 11 a.m., two please call letters were distributed at Revel Bar and Restaurant, located at 12 Little West 12th Street in Manhattan. The investigators left letters and business cards for the night manager. Letters were left at 22 Little West 12th Street, at an apartment complex called "The Garage." A letter was left at an apartment complex located at 17 Little West 12th Street, as well as an additional letter left at 15 Little West 12th Street for a company called Palantir. Employees of the store stated they did not witness the incident and that their store only has internal cameras that do not capture video outside. At approximately 11:30 a.m., three please call letters, one addressed to the manager, bouncer, and hostess of Cielo, were placed in the bar's mailbox. Cielo opens at 11 a.m. Monday through Friday, however was still not open after 11:30 a.m. on the day of the canvass. There was also no answer at the delivery door. No calls were received from Cielo or any of the other businesses and apartments that letters were provided to.

Findings and Recommendations

Identification of Subject Officers

§ 87(2)(b) alleged that the same officer that used a taser against him, spoke rudely to him. Sgt. Alfieri admitted to having a brief verbal interaction with § 87(2)(b) and using a taser against him. § 87(2)(g) PO Benvenuto admitted to using pepper spray against § 87(2)(b) § 87(2)(g) PO Sullivan and PO Castiello both admitted to being the only officers that used physical force to bring § 87(2)(b) to the ground and handcuff him. § 87(2)(g)

Allegation A- Discourtesy- Sgt. Michael Alfieri spoke rudely to § 87(2)(b)

It is undisputed that Sgt. Alfieri spoke to § 87(2)(b) and told him that he needed to leave the vicinity of the club Cielo. Whether Sgt. Alfieri used profanity in speaking with § 87(2)(b) is in dispute. According to § 87(2)(b) (Board Review 3), Sgt. Alfieri called him a "fucking punk." All officers denied that Sgt. Alfieri or any officer called § 87(2)(b) a "fucking punk" or anything to that affect. By all accounts the bouncers were not within earshot of their conversation.

§ 87(2)(g)

Allegation B- Force- PO Nicholas Castiello used physical force against § 87(2)(b)

Allegation C- Force- PO Collin Sullivan used physical force against § 87(2)(b)

Allegation D- Force- PO Brian Benvenuto used pepper spray against § 87(2)(b)

Allegation E- Force- Sgt. Michael Alfieri used a taser against § 87(2)(b)

It is undisputed that § 87(2)(b) was pepper sprayed, tased, and physical force was used to bring him to the ground. § 87(2)(b) is 6'6" tall and weighs 300-lbs. PO Castiello is 5'11"

tall and 195-lbs. PO Benvenuto is 6' tall, and 240-lbs. Sgt. Alfieri is 5'11" tall, and 170-lbs. PO Sullivan is 5'7" tall and 200-lbs.

§ 87(2)(b) level of resistance, sequence of the force used against § 87(2)(b) and the events that preceded the officers' use of force is in dispute. According to § 87(2)(b) he was walking away from the officers who followed him for some unknown reason. § 87(2)(b) then stated that once § 87(2)(b) was in the midst of a large crowd, an officer commanded him to get on the ground. § 87(2)(b) complied by sitting on some nearby steps, but PO Sullivan and PO Castiello still slammed him to the ground, causing a small laceration on his arm. § 87(2)(b) could then feel the effects of OC-spray (burning, watery eyes) but did not see any officer discharge the spray. § 87(2)(b) then stated that as he was on the ground and not struggling with the officers attempts to place him in handcuffs, Sgt. Alfieri used his taser in touch stun mode.

§ 87(2)(g) According to the officers, after § 87(2)(b) was told to leave the vicinity of the club he began yelling at the officers, that they were "Fucking pigs," "Pussies," and "Faggots with badges," (Board Review 7 Arrest Report). The officers all stated that § 87(2)(b) was yelling these statements while walking backwards onto the street, and was not paying attention to vehicular or pedestrian traffic. Due to § 87(2)(b) loud and aggressive demeanor caused a crowd of people to form. Due to § 87(2)(b) continued disruptive and volatile behavior Sgt. Alfieri decided that they were going to place § 87(2)(b) under arrest, and designated PO Benvenuto to be prepared with pepper spray. Sgt. Alfieri then unholstered and pointed his taser at § 87(2)(b) telling him to get on the ground or he would be tased. § 87(2)(b) seeing the laser turned away, and then lunged forward towards the four officers. When lunging forward, Sgt. Alfieri discharged his taser hitting § 87(2)(b) with one prong in the right shoulder blade, and missing with the other. At the same time, PO Benvenuto discharged his OC-Spray hitting § 87(2)(b) in the face. The OC Spray was effective in getting § 87(2)(b) to stop advancing towards the officers, and PO Castiello and PO Sullivan grabbed § 87(2)(b) by the arms and pulled him down to the ground. PO Castiello and PO Sullivan attempted to pull § 87(2)(b) hands together, however due to his large stature and strength, § 87(2)(b) effectively resisted the officers' attempts. As a result Sgt. Alfieri activated the touch stun mode, and tased § 87(2)(b) which got § 87(2)(b) to stop resisting enough to get one of his arms handcuffed, § 87(2)(b) then began resisting again, and Sgt. Alfieri used the touch stun again to tase § 87(2)(b). The second tase allowed the officers to pull his hands completely together and fully handcuff § 87(2)(b). The officers' account is fully supported by the Taser Report prepared by Duty Capt. Daniel Morris (Board Review 8), and the arrest report.

The medical records for § 87(2)(b) noted that he was presenting with "altered mental status." There was no mention in § 87(2)(b) medical records regarding his Blood Alcohol Content, or if there was any mind-altering substances in his system. However, § 87(2)(b) admitted to drinking four to five drinks in four hours, and vouchered in connection to § 87(2)(b) arrest was an alleged stimulant drug (Board Review 9). Additionally, Sgt. Alfieri stated that he observed § 87(2)(b) sweating and with dilated pupils, which caused him to believe that § 87(2)(b) was on some type of narcotic or stimulant. § 87(2)(g)

§ 87(2)(b) medical records note that a prong was removed from § 87(2)(b) § 87(2)(g) § 87(2)(g) § 87(2)(g) § 87(2)(g) § 87(2)(g)

The undisputed fact that § 87(2)(b) was kicked out of Club Cielo, favors the position that § 87(2)(b) was less calm and in control of his actions as he claimed. According to § 87(2)(b) § 87(2)(b) he was kicked out because him and his group of friends were “being loud,” however, by all accounts, only § 87(2)(b) was asked to leave the bar. § 87(2)(g) § 87(2)(g)

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NYPD Patrol Guide Procedure states that officers are required to use the minimum necessary force.

Officers are required to discharge pepper spray using two one second burst, at a minimum distance of three feet, and only in situations when the member of the service reasonably believes that it is necessary to protect self, or another from unlawful use of force.

An officer must consider the totality of the circumstances when deciding the minimum amount of force necessary to overcome resistance when effecting an arrest. Some factors to consider when determining the appropriate use of force include, but are not limited to: A) officer/subject size disparity B) officer/subject strength disparity C) officer/ subject age disparity D) officer’s perception of the subject’s willingness to resist E) Officer’s perception of the immediate threat to the subject, members of service and bystanders F) subject’s violent history, if known G) officer’s location in a hostile environment H) officer’s perception of the subject being under the influence of a stimulant/narcotic which would affect pain tolerance and violence. (Board Review 10)

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Pod: #3

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date